IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6044 of 1988

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESHCHANDRA MULJIBHAI MOCHI - Petitioner(s)

Versus

DEVABHAI KASHIBHAI TALVI & 2 - Respondent(s)

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Appearance :

MR BHARAT T RAO for Petitioner No(s).: 1.
UNSERVED-EXPIRED (R) for Respondent No(s).: 1.
MR MR MENGDEY, AGP for Respondent No(s).: 2,3.

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CORAM :HON'BLE MR JUSTICE AKIL KURESHI

Date : 11/07/2005

ORAL JUDGMENT

In the present petition, the petitioner has challenged the legality of the order dated 14.8.87 passed by the Deputy Collector Chhota-Udepur as confirmed by the order dated 18th June 1988 passed by the Deputy Secretary

(Appeals), Revenue Department, Government of Gujarat. The petition pertains to the proceedings initiated by the revenue authorities questioning the sale of land bearing survey No.457 of village Sankheda, Tal: Sankheda, admeasuring 0 hectare 52 Are 32 sq. meters which was purchased by the petitioner in the year 1973 from respondent No.1 herein. Respondent No.1 has expired during the pendency of the proceedings. Learned advocate for the petitioner, however, submitted that he had remained absent all throughout the proceedings before the authorities below and as a seller of the land in question, he is no more interested in the present proceedings. Counsel further submitted that the question of sale transaction being opposed to the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter to be referred to as “the Fragmentation Act”) is between the petitioner and the revenue authorities. Learned advocate for the petitioner, therefore, sought permission to delete respondent No.1. Permission granted.

2. As noted earlier, the petitioner had purchased land bearing survey No.457 of village Sankheda in the year 1973 by registered sale deed for an amount of Rs.1,500/-. Entry in the revenue records to this effect was also made on 19.6.73. After nearly 14 years thereof, a notice came to

be issued against the petitioner inquiring into the sale transaction and suggesting that the same is opposed to the provisions of the Fragmentation Act being a fragment. The plea of the petitioner was not accepted by the Deputy Collector. He, therefore, came to pass the impugned order dated 14.8.87. The petitioner's appeal to the Deputy Secretary also failed as he confirmed the order of the Deputy Collector by the order dated 18.6.88.

3. From the orders under challenge it can be seen that for a sale transaction entered into between the parties in the year 1973 by registered sale deed and for which necessary mutation entries were also made in the revenue records in 1973 itself, objection regarding the sale transaction being opposed to the provisions of the Fragmentation Act came to be taken for the first time by the authorities in the year 1987. I do not find any explanation on record for initiating proceedings after such a long and inordinate delay. It is not as if the revenue authorities were not aware about the sale transactions since entries in the revenue record were already made. No fraud has been alleged on the parties. The powers are sought to be exercised without any explanation for delay. Apparently, the cognizance taken by the Deputy Collector of the sale transaction being

opposed to the provisions of the Fragmentation Act was much belated without there being anything more on record, it would not be possible for the authorities to nullify the sale transaction after such an unreasonably long period of time. In the case of Valjibhai Jigjivanbhai v. State of Gujarat, 2005 (2) GLH 34 it was held that the powers under the provisions of the Fragmentation Act cannot be exercised at a belated stage and the same have to be exercised within a reasonable time especially when authorities knew about the transaction in question. In view of the ratio laid down by the Division Bench of this Curt in the case of Valjibhai Jagjivanbhai (supra), the orders passed by the authorities below cannot be sustained.

4. In the result, the petition is allowed. The impugned orders are quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)